

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KEVIN HARPER,

Plaintiff,

v.

Case No. 18-C-753

ERIC STEFONEK, et al.,

Defendants.

**ORDER GRANTING MOTION TO STRIKE PLAINTIFF'S
UNTIMELY SUMMARY JUDGMENT FILINGS**

Pro se plaintiff Kevin Harper filed this 42 U.S.C. § 1983 action on May 16, 2018, for alleged violations of his constitutional rights by the defendants while he was held in custody at the Waukesha County Jail. His claims include the utilization of excessive force against him by correctional officers while attempting to place him back in his cell and deliberate indifference to his serious medical needs by correctional officers and a nurse when they did not provide him with medical assistance after he slipped and fell in the shower. Currently before the court is Defendant Nurse Deborah Link's motion to strike Harper's summary judgment motion pursuant to Federal Rule of Civil Procedure 16(f)(1)(C) because it is untimely. Dkt. No. 136.

The court initially set January 8, 2019, as the dispositive motion deadline in its scheduling order. Dkt. No. 41. The deadline was later extended to February 1, 2019, after a number of discovery disputes warranted additional time. *See* Dkt. No. 78. All of the defendants timely filed their motions for summary judgment on the February 1, 2019 deadline. Dkt. Nos. 81, 86. On February 8, 2019, Harper filed a motion requesting additional time to respond to the defendants'

motions. Dkt. No. 123. The court granted Harper's motion "only to the extent that Plaintiff's Response to Defendants' Motions for Summary Judgment, 81 and 86, are due April 15, 2019." Dkt. No. 125. On April 2, 2019, 60 days after the dispositive motion deadline, Harper filed a motion summary judgment along with his responses to the defendants' motions.

Rule 16 allows the court on motion or on its own to issue "any just orders, including those authorized by Rule 37(b)(2)(A)(ii)–(vii)," which includes striking pleadings in whole or in part, if a party "fails to obey a scheduling or other pretrial order." Fed. R. Civ. P. 16(f)(1)(C).

Given Harper's unjustified delay in filing his motion for summary judgment, the fact that the defendants have filed motions for summary judgments and Harper had the opportunity to present his arguments in his responses to those motions, his motion for summary judgment will be stricken pursuant Federal Rule of Civil Procedure 16(f)(1)(C). It should also be noted that because Harper, as the plaintiff, has burden of proof as to his claims, the defendants' own motions for summary judgment establish that he is not entitled to such relief in any event. Accordingly, the motion to strike Harper's motion for summary judgment (Dkt. No. 136) is **GRANTED**.

SO ORDERED this 12th day of April, 2019.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court